

Article - Natural Resources

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§4–205.1.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Aquatic organism” means an organism that lives part of its life in water.
- (3) “Ecosystem” means a system of living organisms and their environment, each influencing the life of the other and necessary for the maintenance of life.
- (4) “Introduction into State waters” includes use of an organism as bait in the waters of the State.
- (5) “Native” means having historically lived, grown, and reproduced in State waters.
- (6) “Naturalized” means documented as having lived, grown, and reproduced in State waters without known harm to the ecosystem.
- (7) “Nonnative” means other than native or naturalized.
- (8) “Nuisance organism” means a nonnative aquatic organism that will foreseeably alter and threaten to harm the ecosystem or the abundance and diversity of native or naturalized fish and other organisms.
- (9) “State of nuisance” means a condition in which a nuisance organism will foreseeably alter and threaten to harm the ecosystem or the abundance and diversity of native or naturalized fish and other organisms.
- (b) (1) Except as provided under paragraph (2) of this subsection, the Secretary may adopt regulations to:
 - (i) Prohibit the importation, possession, or introduction into State waters of a nonnative aquatic organism in order to prevent an adverse impact on an aquatic ecosystem or the productivity of State waters;
 - (ii) Manage the sale, transport, purchase, importation, possession, harvest, season, size limits, open area, catch devices, and introduction of nuisance organisms; and

(iii) Conduct pilot projects to demonstrate and evaluate new approaches for the management and control of nuisance organisms.

(2) The provisions of this section do not apply to:

(i) An aquaculture operation for which the Department has issued a permit under Subtitle 11A of this title;

(ii) The possession, importation, or transport of a nonnative aquatic organism for purposes related to a permitted aquaculture operation; or

(iii) A person that has a valid nursery inspection certificate or plant dealer license issued in accordance with Title 5, Subtitle 3 of the Agriculture Article.

(c) (1) (i) Subject to the requirement under subparagraph (ii) of this paragraph, the Department may enter and inspect a property to determine whether a state of nuisance exists.

(ii) The Department shall give reasonable notice of an intent to enter the property of a landowner, occupant, or tenant or any other person reasonably believed to be in possession of a nuisance organism.

(2) (i) When making a determination regarding the existence, imminence, and gravity of a state of nuisance, the Secretary shall consult appropriate experts and any other available scientific resources.

(ii) The Department shall investigate and determine, to the extent possible, the person who is causing or has caused the state of nuisance.

(3) (i) The Department may seize a nuisance organism that has created or will foreseeably create a state of nuisance.

(ii) The Department may dispose of a seized nuisance organism in any manner deemed appropriate.

(d) (1) If the Secretary finds that a state of nuisance exists but does not present an imminent danger to the healthy balance of an ecosystem, the Secretary shall serve a written notice to the person determined to have caused the state of nuisance and order the person to abate the state of nuisance within a time specified in the notice.

(2) The notice shall be served:

(i) On the person determined to have caused the state of nuisance; or

(ii) If the person determined to have caused the state of nuisance cannot be found, on the owner or occupant of the property:

1. Where the state of nuisance exists; or

2. That must be entered to access or abate the state of nuisance.

(3) If the person served with the notice under paragraph (2)(i) of this subsection fails to comply with the requirements of the notice or if the person complies but the state of nuisance is likely to recur on the same property, the Secretary may file a complaint in the circuit court for the county where the state of nuisance exists.

(4) A complaint filed under paragraph (3) of this subsection may seek a court order requiring the person to:

(i) Comply with the requirements of the Secretary's abatement notice;

(ii) Abate the state of nuisance within a time specified in the order; or

(iii) Prevent the state of nuisance from recurring.

(5) (i) This paragraph applies to a person served with a notice under paragraph (2)(ii) of this subsection.

(ii) 1. If the person voluntarily abates the state of nuisance within the time specified in the notice, the Department shall reimburse all reasonable costs of abatement.

2. If the person consents, the Department may enter the property and, at the Department's expense, do any work and use any materials necessary to abate the state of nuisance.

(iii) If the person does not voluntarily abate the state of nuisance within the time specified in the notice and refuses to allow the Department to enter on the property for the purpose of abating the state of nuisance, the Secretary may file a complaint in the circuit court for the county where the state of nuisance exists.

(iv) A complaint filed under subparagraph (iii) of this paragraph may seek a court order requiring the person to allow the Department to:

1. Enter on the property; and
2. At the expense of the Department, do any work and use any materials necessary to abate the state of nuisance.

(v) If the Department abates a state of nuisance under this paragraph, the Department shall:

1. Make reasonable efforts to repair any property damage caused by abatement activities; or
2. Reimburse the person for repair or replacement costs associated with damages caused by abatement activities.

(e) (1) If the Secretary determines that a state of nuisance exists that presents an imminent danger to the healthy balance of an ecosystem, the Secretary may summarily abate the state of nuisance.

(2) Before summarily abating a state of nuisance under this subsection, the Secretary shall, as appropriate:

(i) If the owner, tenant, or other occupant of the property where the state of nuisance exists is reasonably believed to have caused the state of nuisance, serve an abatement order on the owner, tenant, or other occupant;

(ii) If the property is unoccupied and the owner cannot be found, attach an abatement order to the property where the state of nuisance exists; or

(iii) If a person other than the property owner, occupant, or tenant is reasonably believed to have caused the state of nuisance:

1. Serve an abatement order on that person; and
2. A. Serve a copy of the abatement order on the owner of the property where the state of nuisance exists or, if the owner cannot be found, on the occupant or tenant of the property; or

B. If the property is unoccupied and the owner cannot be found, attach a copy of the abatement order to the property where the state of nuisance exists.

(3) (i) An abatement order under this subsection shall require and state:

1. A time period within which the property owner, occupant, or tenant or any other person determined to have caused the state of nuisance shall abate the state of nuisance; and

2. To the best knowledge of the Department, the work and materials necessary to abate the state of nuisance.

(ii) The time period within which to abate the state of nuisance or to commence abatement, as within the discretion of the Secretary, may not be less than 24 hours from the date and hour that the order is served.

(4) If the property owner, occupant, or tenant or any other person served with an abatement order under this subsection fails to abate or commence abatement of the state of nuisance within the time specified in the order, the Department may:

(i) Enter on the property; and

(ii) At the expense of the property owner, occupant, or tenant or any other person determined to have willfully or negligently caused the state of nuisance, do any work and use any materials necessary to abate the state of nuisance.

(5) (i) 1. As soon as the total cost of any abatement activities performed by the Department under this subsection has been determined, the Secretary shall provide a full statement of charges to any person determined to have willfully or negligently caused the state of nuisance.

2. If, within 90 days after the receipt of charges the person does not remit payment to the Secretary, the Secretary may file suit against the person in the county where the state of nuisance was abated.

(ii) 1. To the extent possible, the Department shall minimize property damage during abatement activities.

2. If the Department has not determined that the property owner, occupant, or tenant caused the state of nuisance, the Department shall:

A. Make reasonable efforts to repair any property damage caused by abatement activities; or

B. Reimburse the owner, occupant, or tenant for repair or replacement costs associated with damages caused by abatement activities.

(f) All abatement activities shall be performed in accordance with criteria established by the Department.

(g) An owner, occupant, or tenant of a property on which the Department has performed abatement activities may not be held civilly liable for damages claimed by a third party as a result of abatement activities performed by the Department, unless the owner, occupant, or tenant has been determined to have willfully or negligently caused the state of nuisance.

(h) A person may not:

(1) Interfere with the Secretary, a representative of the Secretary, or any other individual engaged in the abatement or summary abatement of a state of nuisance under this section; or

(2) Refuse to allow the Secretary, a representative of the Secretary, or any other individual to enter on any property for the purpose of abating or summarily abating a state of nuisance under this section.

(i) (1) In addition to any other penalty provided under law, a person who violates a provision of this section or a regulation adopted under this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 30 days or a fine not exceeding \$2,500 or both for each offense, but not exceeding a total of \$25,000 for offenses arising out of the same enforcement action.

(2) Each nuisance organism imported or possessed in violation of this section or a regulation adopted under this section constitutes a separate offense.

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